

## ***PERSONAL INJURIES***

There are three main aspects to dealing with the results of personal injury: medical treatment, employment, and recovery of proper compensation.

### ***MEDICAL TREATMENT***

#### **Coordinating Doctor**

It is important that, where possible, one medical practitioner co-ordinate your programme of diagnosis and treatment, immediately following your injury through to recovery. Often that individual will be your family doctor. We will then be able to have a clear package of evidence of your injuries for presentation to the other side and to the Court. It also helps avoid the common and damaging allegations of 'orchestrated' treatments and 'doctor shopping'.

If you do not have a family doctor, or are dissatisfied with the family doctor you are seeing now, you should discuss your friends' and colleagues' doctors with them. If you wish, we may be able to tell you of family doctors in your area whom you can consider.

#### **Specialists**

Depending on the severity of your injuries, your family doctor may refer you to a variety of therapists and specialist doctors. If you have suffered a soft tissue injury, you may be prescribed physiotherapy, massage therapy, chiropractic treatments, or exercise therapy, or a combination of these or other treatments over time.

If you have suffered serious soft tissue injury or other serious injury, you may be referred to an orthopaedic surgeon, a rheumatologist, or a neurologist. You may require some counselling to help you to deal with the results of your injury.

If needed, we may be able to tell you of professionals in your area whom you can consider.

#### **Medical History**

In most cases, a full understanding of your medical history is needed for us, your doctors and the doctors for the other side to be able to properly assess your condition now. It is very important that you tell us and all individuals examining you or treating you of all injuries and conditions you had before or after the injuries for which you are claiming with symptoms at all like those you have suffered since

your injuries. If your own doctors or therapists do not know of your earlier injuries or conditions, doctors for the other side will. It is best that your doctors know and we know also.

### *EMPLOYMENT*

If your injury is of a minor nature, you may miss no work. Occasionally, economic need drives an injured person to work despite their injury. This can prolong recovery. You should discuss this first with us. We may advise you to discuss this with your doctor.

#### Unemployment Insurance Benefits

If you do miss work as a result of your injury, you may be able to get unemployment benefits, and should apply for them immediately. If you are able to get unemployment benefits, but do not apply, the amount of wage loss you can recover from ICBC may be reduced by the amount of the benefits you could have had.

#### Wage Replacement Insurance through Employment

If you are unionized or work for certain, usually larger, employers, you may be entitled to insurance payments while you are off work. You should make a claim where possible. Note that you may have to later repay what you get, out of lost wages recovered in your personal injury claim. You may or may not have to repay the portion of wage loss recovered which you pay in legal fees. We can assist you in determining these matters.

#### ICBC Part VII Benefits

If you were injured in a car accident, you will normally be entitled to get from ICBC part of your wages until you are able to return to work, regardless of who caused the accident. We will assist you in claiming these benefits.

#### Return to Employment

Ideally, you will at some point, in consultation with your doctors, be able to return to the work you had before your injury. You must see your doctor regularly and follow her or his instructions while you are off work. Ask your doctor how long you should wait before returning to work, and consult with your doctor before

returning to work if you have suffered a substantial injury. If you are off work without a recommendation from your doctor, any wages you lose will probably not be recoverable.

### Retraining

In some cases you may be unable to return to your old job, but be capable of doing other work. In this case we will normally arrange for you to see a vocational consultant or a rehabilitation specialist or both to determine what employment would suit you and what retraining, if any, would be needed.

### *RECOVERY OF PROPER COMPENSATION*

Compensation in a personal injury claim usually falls within three broad categories: damages for pain and suffering (often called general damages), loss of past and future income, and expenses occasioned by the injury. To recover proper compensation, it is usually necessary to begin a court action, though most court actions settle before trial. If you are successful at trial, you will normally also recover a small part of your legal costs.

### Choosing the Court

If the total value of your claim is no more than \$25,000, the Provincial Court (Small Claims) is usually the right court. Otherwise, we begin all personal injury claims in the Supreme Court of British Columbia.

### Writ of Summons and Statement of Claim

We do so by filing a Writ of Summons and Statement of Claim, which names the people and companies involved, tells in general terms of the accident in which you were injured, and, again in general terms tells of the injuries you suffered and their consequences. This must be done within two years of the accident (there are some very limited exceptions.) We then arrange to have the other parties served with copies of the Writ and Statement of Claim.

### Statement of Defence

In response the other parties, called the Defendants, will file Appearances and, some time later, a Statement of Defence. They may or may not admit responsibility for the accident, depending on their view of circumstances. Invariably they will deny that the accident caused your injuries or your financial

losses. Further, they say that your failure to do the right things before and following the accident has contributed to your injuries and to your losses.

### Trial Date

Once we have the Statement of Defence, a date can be arranged for the trial of your claim, at least one year later, and often further away.

### Exchange of Information

Each side will require the other side to give it copies of all documents relating to the accident and to your claim. It is important that you give us as soon as possible all documents you have in your possession which have anything to do with the accident, your past and present medical condition, your past and present employment, and any opportunities you may have lost or may lose because of your injury. We will review them all before giving copies to the Defendants, to ensure no privileged information is given. From time to time we will be ordering clinical records, medical reports, employment information and tax information for you. In most instances, we will provide copies to the Defendants.

Each side has the opportunity to discover more of the other side's case at an examination for discovery. We normally only examine the Defendants if they do not admit responsibility for the accident. At the Defendants' examination of you, they will ask you questions about the accident, your employment history, your schooling and your medical condition, past and present. You will answer under oath or after solemnly affirming to tell the truth. It is important that you answer fully and accurately at your examination, as any misstatements will be used against you at trial. We will work with you to prepare you for your examination.

### Pretrial Settlement

Discussions and letters between lawyers will be taking place all along. When appropriate these will include negotiations toward settlement. Eighty to ninety percent of personal injury claims are settled out of court. Settlement occurs most often, and usually most beneficially, shortly before trial.

### Medical Examinations of You by the Defendants' Doctor

In most cases where your injury lasts some time, the Defendants will want to have their own doctor examine you and give them his or her opinion of your condition, its causes, and the appropriate treatment. Usually this is the Defendants' right. It is very important that you tell the Defendants' doctor about all injuries and conditions

you have had at any time with symptoms similar to those you suffered or suffer as a result of the accident.

### Are You Being Watched?

Where the defendants suspect malingering or exaggerating, they often hire private investigators to watch and videotape you, and to talk to people who work with you or live near you. Often they will resort to trickery to have you perform an action for video which minimizes your injury. For example, if you have a back injury, a note may be left on your windshield apologizing for the damage done to a lower part of your car. When you stoop to look, you may be on camera. Or a fellow camper may ask you to help in moving firewood. Behave within the limits of your injury and be aware that you may be under surveillance from time to time. Be aware that ICBC routinely accesses social network web sites to obtain information on Claimants.

### Helping Us Advance Your Claim

Along with this, we are sending you the first few pages of a diary that we ask you to keep and add to from now until your claim is settled. In it please note each medical and therapeutic appointment you have (and how far you travel to attend it), and your out-of-pocket expenses. Please also note any significant events - in some cases this may be a severe headache, in others it may be a day without a severe headache - including attempts to do again activities you did before your injury, and the result of the attempts.

It may be two years or more before your case goes to trial. You will find a well-kept diary invaluable when, for example, you are asked at trial how you felt three months after your injury.

Keep receipts for all your injury-related expenses, and give them to us from time to time.

Always make sure we have your current address and telephone number. If we are unable to reach you in an emergency, it may mean the loss of your claim.

Follow the advice of your medical advisors, and consult with them and us about any changes to your treatments or to your employment .

### Please Call

We trust this has been informative. From time to time over the course of your claim you will have questions. Please ask.

Thank you.